

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

NEMET CHEVROLET LTD., *et al.*

Plaintiffs,

v.

CONSUMERAFFAIRS.COM, INC.

Defendant.

CIVIL ACTION NO. 1:08cv254

MOTION TO DISMISS OR STRIKE COMPLAINT

COMES NOW Defendant ConsumerAffairs.com, Inc., by counsel, and, pursuant to the Rules of the Federal Rules of Civil Procedure, files its Motion to Dismiss or Strike Complaint, setting forth the following:

1. Plaintiffs Nemet Chevrolet Ltd. (“Nemet Chevrolet”) and Thomas Nemet d/b/a Nemet Motors (“Nemet Motors”) filed suit against Defendant ConsumerAffairs.com, Inc. (“ConsumerAffairs”) alleging Virginia common law claims for defamation (Count I) and tortious interference with business expectancy (Count II) and unfair competition claims under the Lanham Act, 15 U.S.C. §1051, et seq. (Counts III, alleging false designation of origin, and IV, alleging false advertising) in connection with ConsumerAffairs’s operation of a consumer complaint website.

2. Counts I and II fail to state a claim upon which relief may be granted. Both claims are barred by the federal immunity granted to website operators, like ConsumerAffairs, by Section 230 of the Communications Decency Act of 1996. Moreover, in Counts I and II, Plaintiffs’ seek punitive damages which far exceed the applicable statutory cap on such damages.

3. Count III fails to state a claim upon which relief may be granted. Plaintiffs do not have a valid, protectable trademark which has been imitated by ConsumerAffairs, as is required to maintain an unfair competition claim under the Lanham Act

4. Count IV fails to state a claim upon which relief may be granted. Plaintiffs do not have standing to assert a false advertising claim under the Lanham Act because neither is a competitor of ConsumerAffairs.

WHEREFORE, in consideration of the foregoing and the arguments set forth in the accompanying brief, Defendant ConsumerAffairs.com, Inc. respectfully moves this Court to dismiss or strike the Complaint, with prejudice, and grant it such other and further relief as the Court deems just and appropriate

Respectfully Submitted,

CONSUMERAFFAIRS.COM, INC.
By counsel

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of April, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following::

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